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TULARE COUNTY SUPERIOR COURT
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20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 IN AND FOR THE COUNTY OF TULARE, VISALIA DIVISION

22 In re SEARCH WARRANT 013487
23 EXECUTED AUGUST 22, 2018 AT
24 JPMORGAN CHASE BANK

25 YORAI BENZEEVI,

26 Moving Party,

27 v.

28 SUPERIOR COURT OF THE COUNTY
OF TULARE

29 Respondent,

30 TULARE COUNTY DISTRICT
31 ATTORNEY'S OFFICE,

32 Real Party in Interest.

Case No.

33
34 REPLY OF DR. YORAI BENZEEVI IN
35 SUPPORT OF MOTION FOR RETURN
36 OF SEIZED PROPERTY AND RELATED
37 EVIDENTIARY HEARING

38 Date: October 5, 2018
39 Time: 2:00 p.m.
40 Dept.: 13
41 Judge: Hon. John P. Bianco

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43 PUBLIC – Redacts Materials from Conditionally Sealed Record

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45 REPLY OF DR. BENZEEVI ISO MTN FOR RETURN OF SEIZED PROPERTY
46 Case No.

I. INTRODUCTION

The District Attorney (“the State”) has seized—without any legal or factual justification—
[REDACTED] of funds from a bank account belonging to Dr. Benzeevi. In response to
a straightforward motion that this unlawful seizure be unwound, the State have now made two
separate filings. The first filing offers a factual hearing, claims this is a civil proceeding, and
maintains that none of Dr. Benzeevi’s evidence can properly be considered. The second consists
of a sweeping factual diatribe untethered to a single sworn declaration or authenticated document
and advances legal assertions detached from authorities that are on point. The Court is left with a
[REDACTED] seizure bereft of legal basis or factual support.

In the County of Tulare, as in the rest of the State of California—and indeed throughout these United States—Americans may not be deprived of their property absent due process of law. People are presumed innocent, especially those who have never been charged with a crime. The money seized from Dr. Benzeevi's account consists of dollars from different sources. It is neither contraband nor evidence of a crime. Its seizure prior to even the filing of a charge, much less the demonstration of probable cause required to bring such a charge before a jury, has no basis under California law. The motion for return of seized property must be granted, and the money must be returned.

Dr. Benzeevi gladly accepts the State's offer of an evidentiary hearing. He has rights in his property and is due appropriate process before the State seizes it. But the deprivation of [REDACTED] based solely on the near-hysterical arm-waving by a Deputy District Attorney without any facts in support is not enough to protect those rights under any framework. This Court should order the money returned immediately.

II. ARGUMENT

A. There is currently no factual or legal basis to continue the seizure of Dr. Benzeevi's assets.

The State's failure to submit a single shred of admissible evidence compels the conclusion that the seized funds must be released. Any search or seizure must be supported by probable cause—which the State must establish. *Illinois v. Gates*, 462, U.S. 213, 238 (1983). At this

1 point, the State has established nothing. There is no legal authority that allows the State to seize
2 property based on a promise to prove the basis for the seizure at a later date. For this reason
3 alone, Dr. Benzeevi's motion should be granted.

4 Moreover, California does not allow a prosecutor to seize funds of an unindicted person
5 when those funds are neither proceeds of nor evidence regarding a crime. Cal. Penal Code
6 § 186.11(d)(1)&(2) authorizes the State to seize and freeze funds *only after* a criminal complaint
7 or indictment has been filed. The statute's silence about pre-indictment seizure makes clear that
8 the type of seizure the State is attempting here is outside statutory authority and violates Dr.
9 Benzeevi's rights.

10 **B. Even if the State's factual assertions are taken as true, there is no basis to
11 conclude that Dr. Benzeevi's current bank account contains Celtic loan
proceeds.**

12 While the seized bank account may have indirectly received proceeds from the Celtic loan
13 eleven months earlier, the account contained significantly more non-Celtic money. Moreover,
14 after the alleged Celtic loan proceeds were deposited into the account, considerably more money
15 was subsequently withdrawn from the account, rendering it impossible to conclude that any Celtic
16 money remained in at the time of the seizure. It is because of circumstances like this that
17 California law presumes that a search warrant is stale four weeks after an alleged crime. *See*
18 *People v. Cooks*, 141 Cal. App. 3d 224, 298 (1983).

19 Recognizing that it has no way to justify the seizure of Dr. Benzeevi's current funds, the
20 State resorts to inapposite money-laundering cases to argue that once tainted funds are deposited
21 into the account, the account is forever tainted. Unsurprisingly, the federal and state money-
22 laundering cases that the State cites—*United States v. Rutgard*, 116 F.3d 1270 (9th Cir. 1997) and
23 *People v. Mays*, 148 Cal. App. 4th 13 (2007)—never mention Penal Code § 1524, which is the
24 statute that authorizes the search warrant that issued here.¹ Nor has any California court ruled

25 ¹ Indeed, the State's cited cases actually refute its own argument. In *Rutgard*—which deals with
26 an unrelated “draconian” federal money laundering statute—the court expressly “decline[d] to
27 create” any presumption about whether “tainted” money is transferred first (or last) out of an
28 account that holds tainted and untainted funds. *Id.* at 1292–93. And *Mays* dealt with a situation
where “the defendant’s entire business was illegal,” and therefore “all of the funds represented
criminally-derived funds”—a point that the State notably omits from its briefing. 148 Cal. App.
4th at 32.

1 that a money-laundering analysis is appropriate when analyzing whether assets are "stolen or
2 embezzled" pursuant to Penal Code § 1524.

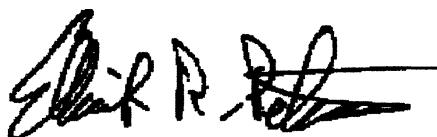
3 Accordingly, the State has no legal basis to seize funds from an account that once held
4 stolen proceeds without actually proving that the account's current balance consists only of stolen
5 funds.

6 **III. CONCLUSION**

7 While Dr. Benzeevi is willing to participate in the evidentiary hearing that the State
8 requests,² his assets must be unfrozen in the meantime. In the United States, people may be
9 deprived of liberty and property only after due process has been satisfied; and at this time, there is
10 simply no basis to seize Dr. Benzeevi's funds. Compounding the harm of this seizure is that Dr.
11 Benzeevi requires the frozen funds to defend himself against the State's sprawling criminal
12 investigation—a clear violation of his Sixth Amendment right to counsel. Accordingly, Dr.
13 Benzeevi's motion should be granted, and his funds should be released immediately.

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15 Dated: October 3, 2018

KEKER, VAN NEST & PETERS LLP

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28 Attorneys for Dr. Yorai Benzeevi and
HealthCare Conglomerate Associates, LLC

² In the event that the Court holds an evidentiary hearing on whether a crime was committed, Dr. Benzeevi will refute the State's assertions at that time. Notably, the State appears to concede that 1) the MSA and Resolution 852 authorized HCCA to receive payment for its services and to enter into loan transactions on behalf of the District and 2) the legality of any action rescinding Resolution 852 prior to the execution of the Celtic loan was highly questionable and was in fact questioned by multiple lawyers who were advising Dr. Benzeevi at the time. Accordingly, any theory of criminality that the State puts forward will be highly suspect, as the State would not be able to establish that Dr. Benzeevi had the necessary mental state to commit a crime under these circumstances.